

REMARKS/ARGUMENTS

The Applicants respond to the rejections of the claims in the Office Action as follows:

Claim Rejections - 35 U.S.C. 102(e)

Claims 1-8 and 16-20 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,093,439 to Whaley et al. ("Whaley" or "the '439 patent"), which was filed on May 8, 1998. The present application claims priority based on European Patent Office (EPO) 99200262.6, which was filed on January 29, 1999, less than eight (8) months after the '439 patent was filed. Accordingly, Applicants are submitting herewith a declaration under 37 C.F.R. § 1.131 by Jakob R. Woltjes, one of the inventors of the present application, which shows that the present invention was made prior to May 8, 1998.

Mr. Woltjes states at paragraph 4 of his Declaration that he co-authored meeting notes (Exhibit A) prior to May 8, 1998, which discussed the discovery of the composition that is the subject of the present invention. The meeting notes cited by Mr. Woltjes state:

During the mixing of existing products, it was discovered by chance that a mixture of 75 % Perfectamyl Gel NF and 25 % Farinex VA 85 T resulted in end products having good texture products. Specifically the elasticity is excellent. Although the product does not correspond exactly with gelatin, customers are enthusiastic about the properties.

Mr. Woltjes states at paragraph 5 of his Declaration that he wrote a Report (Exhibit B) prior to May 8, 1998 which discussed the progress being made on the present invention in which he concluded:

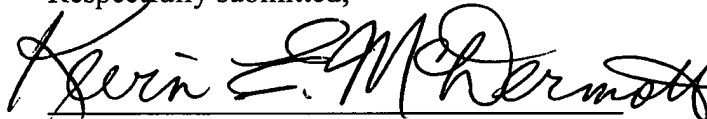
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After all these trials it can be concluded that a recipe based on Fairnex VA 85T and Perfectamyl Gel NF in a ratio of 25/75 result in a moulded confectionery product with a good clarity and an elastic texture.

Mr. Woltjes goes to state in paragraph 5 of his declaration that Farinex VA 85T is a cross-linked starch and Perfectamyl Gel NF is a depolymerized starch. Thus, the Report that is attached to Mr. Woltjes' Declaration as Exhibit B clearly shows that the present invention was made prior to May 8, 1998. Accordingly, Applicants respectfully submit that the Woltjes Declaration overcomes the rejection under 35 U.S.C. 102(e) and respectfully request early allowance of the claims.

If the Examiner has any questions or comments relating to this Request, the Examiner is respectfully invited to contact Applicants' attorney at the telephone number provided below.

Respectfully submitted,



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